

This letter describes how sales of food can be subject to either the lower (1%) State tax rate or the higher (6.25%) State tax rate under the Retailers' Occupation Tax Act. See Section 130.310. (This is a GIL.)

October 5, 2005

Dear Sir or Madam:

This letter is in response to your letter dated January 6, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I have one question regarding of the sales tax.

We are retail gift shops and sell gifts item [sic], drink, greeting card and food items. The sales of food items are about 20% of total sales. Most of food items are in individual single-sized servings pre-packaged item, such as potato chips, candy bars, ice cream and cookies. Do we charge high rate or reduced rate on all food sales?

If you have any questions, please give me a call. Thanks.

#### **DEPARTMENT'S RESPONSE:**

For general information regarding the tax liabilities for food, drugs and medical appliances please refer to 86 Ill. Adm. Code 130.310. This regulation describes how sales of food can be subject to either the lower (1%) State tax rate or the higher (6.25%) State tax rate under the Retailers' Occupation Tax Act. Local sales taxes may also apply depending upon where retail sales are made.

The regulation provides that food, which is to be consumed off the premises from where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate

consumption), is taxed at the State rate of 1% plus applicable local taxes. All sales by retail establishments that provide facilities for on-premises consumption of food are subject to the high rate of tax unless the establishments utilize separate means of collection and physically partition the areas in which food not prepared for immediate consumption is sold. See 86 Ill. Adm. Code 130.310(b)(2)(A).

If businesses do not provide facilities for on-site consumption they must charge the high rate (6.25%) on all food sales if a majority (over 50%) of their gross receipts from sales of food prepared for immediate consumption (prepared by the retailer so as to be eaten without substantial delay after the final act of preparation). If a majority of their gross receipts (over 50%) were from food sales of items sold in bulk (grocery type items), they would charge the low rate (1%) on all food sales (except for hot foods, foods prepared by the retailer for immediate consumption, soft drinks and alcoholic beverages).

Hot foods, food prepared by the vendor for immediate consumption, soft drinks, and alcoholic beverages are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

EEB:msk